Supreme Court, U.S.
FILED
SEP 18 1998
OFFICE OF THE CLERK

No. 98-183

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

LANDGATE, INC.,

Petitioner,

v.

CALIFORNIA COASTAL COMMISSION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE CALIFORNIA SUPREME COURT

PETITIONER'S REPLY BRIEF

BENJAMIN M. REZNIK
(Counsel of Record)
JOHN M. BOWMAN
JEFFER, MANGELS, BUTLER
& MARMARO LLP
2121 Avenue of the Stars
Tenth Floor
Los Angeles, California 90067
(310) 203-8080
Counsel for Petitioner.

September 18, 1998

Washington, D.C. • THIEL PRESS • (202) 328-3286

9 pp

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. LANDGATE HAS STANDING BECAUSE THE PROCEEDINGS BELOW RESULTED IN AN ADJUDICATION OF LEGAL RIGHTS WHICH CONSTITUTES THE KIND OF INJURY COGNIZABLE IN THIS COURT 1

III. CONCLUSION 6

TABLE OF AUTHORITIES

Page(s)

CASES

Warth v. Seldin,
422 U.S. 490 (1975) 3

ASARCO, Inc. v. Kadish,
490 U.S. 605 (1989) *3,4,5*

STATUTES

California *Civil Code* § 954 2

I.
INTRODUCTION

In its opposition brief, Respondent California Coastal Commission (the "Commission") argues that Petitioner Landgate, Inc. ("Landgate") lacks standing to pursue a temporary takings claim in this Court despite the fact that the trial court awarded temporary takings damages to Landgate—a judgment that the California Supreme Court reversed without considering the alleged standing issue. Pursuant to Supreme Court Rule 15.6, Landgate respectfully submits the following reply brief to address this argument, which was raised for the first time before this Court in the Commission's opposition brief.[1/]

II.
LANDGATE HAS STANDING BECAUSE THE PROCEEDINGS BELOW RESULTED IN AN ADJUDICATION OF LEGAL RIGHTS WHICH CONSTITUTES THE KIND OF INJURY COGNIZABLE IN THIS COURT

The Commission argues that Landgate, as the "remainderman," lacks standing to pursue a temporary takings claim. Opposition, pp. 7-9. The Commission's entire argument is premised on the following assertions:

(1) That the Commission filed a motion in the trial court to dismiss Landgate's complaint on the alleged

---

[1/]All of the other arguments contained in the Commission's opposition brief were thoroughly addressed in Landgate's Petition For A Writ of Certiorari and in the briefs filed by amici in support thereof. For this reason, a reply to the Commission's other arguments is unnecessary.

ground that Landgate did not have standing to pursue a temporary takings claim;

(2) That in response to this motion Landgate successfully moved to amend its complaint to include Peter and Punte Bogart (the "Bogarts") as plaintiffs; and

(3) That by amending its complaint to add the Bogarts as additional plaintiffs, Landgate somehow "prevented" the California courts from deciding the alleged standing issue. *See* Opposition, pp. 7-9.

The Commission's argument is specious and must be rejected for several reasons.

First, the Commission's opposition brief conveniently ignores the fact that the Bogarts, prior to joining the action as plaintiffs, assigned their interest in any future damage recovery to Landgate. 5 C.T. 1171. *See* California *Civil Code* § 954 ("A thing in action, arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner"). For this reason, the trial court deemed the Commission's standing argument to be moot. 5 C.T. 1227, 1167. These facts alone refute the Commission's contention that Landgate lacks standing.

Second, the Commission concedes, as it must, that the trial court judgment "jointly awarded damages" to the Bogarts *and* Landgate. Opposition, p. 8. This judgment was upheld by the California Court of Appeal, but was subsequently reversed by the California Supreme Court, which held that no regulatory taking had occurred. App. 35a. The California Supreme Court's decision, if allowed to stand, bars Landgate from ever recovering damages under the trial court's judgment. As such, Landgate is clearly

faced with an "actual or threatened injury" that is sufficiently "distinct and palpable" to support a finding that Landgate has standing in this Court. *Warth v. Seldin*, 422 U.S. 490, 498-501 (1975) (the standing requirement concerns the question of whether plaintiff has a sufficient "personal stake" in the outcome of a controversy).

Third, the Commission's self-serving statement that it "had no reason to pursue the standing issue" after the Bogarts were added to the complaint as additional plaintiffs (Opposition, p. 9) is a *non sequitur*, since there is no basis to conclude that the mere presence of the Bogarts as co-plaintiffs would have any effect on *Landgate's* standing. The addition of the Bogarts as co-plaintiffs did not preclude the Commission from pursuing the issue of *Landgate's* alleged lack of standing before the California courts. Thus, it is the Commission, not Landgate, that waited until now "to revive this issue." Opposition, p. 9. If the California courts were in any way "prevented . . . from resolving any factual issues regarding the Landgate-Bogart relationship," as the Commission asserts (Opposition, p. 9), it is the Commission, not Landgate, that is responsible.

Finally, Landgate is not required to satisfy federal standing requirements under this Court's decision in *ASARCO, Inc. v. Kadish*, 490 U.S. 605 (1989). In *ASARCO*, various taxpayers and the Arizona Education Association sought a declaration in state court that a state statute governing mineral leases on state land was void because it violated federal legislative mandates. *Id.* at 610. The trial court upheld the statute, but the Arizona Supreme Court reversed, ruling that the statute was "unconstitutional and invalid" as to certain mineral leases. *Id.* Various mineral lessees filed a petition for certiorari, and this Court granted review. *Id.* Before addressing the constitutional

issues, this Court addressed several jurisdictional issues, including the following:

> The question is whether, under federal standards, the case was nonjusticiable at its outset because the original plaintiffs lacked standing to sue; and if so, whether we may examine justiciability at this stage because the Arizona courts heard the case and proceeded to judgment, a judgment which causes concrete injury to the parties who seek now for the first time to invoke the authority of the federal courts in the case.

Id. at 612.

After concluding that the plaintiffs would have lacked standing had they originally filed the action in federal court, this Court ruled that the petitioners had standing because "[t]he state proceedings ended in a declaratory judgment adverse to petitioners, an adjudication of legal rights which constitutes the kind of injury cognizable in this Court on review from the state courts." *Id.* at 618. As this Court explained:

> When a state court has issued a judgment in a case where plaintiffs in the original action had no standing to sue under the principles governing the federal courts, we may exercise our jurisdiction on certiorari if the judgment of the state court causes direct, specific, and concrete injury to the parties who petition for our review, where the requisites of a case or controversy are also met.

Id. at 623-24. This Court also observed that it would be "inappropriate" to dismiss the case at this stage because

"[t]hat disposition would come at the cost of much disrespect to state-court proceedings and judgments." *Id.* at 623.

Here, as in *ASARCO*, the state court proceedings "resulted in a final judgment altering tangible legal rights." *Id.* at 619. Since the court below held that no regulatory taking had occurred, the "final judgment" of the California courts clearly caused a "direct, specific, and concrete injury" to Landgate, the party seeking this Court's review. *Id.* Furthermore, because Landgate does not seek to secure an "abstract determination" or a "decision advising what the law would be on an uncertain or hypothetical state of facts," the requisites of a "case or controversy" are clearly met. *Id.* at 619, 623-24. For these reasons, Landgate has standing before this Court.

III.
CONCLUSION

For the foregoing reasons, and for all of the reasons set forth in Landgate's Petition For A Writ of Certiorari, the Petition should be granted.

Respectfully submitted,

BENJAMIN M. REZNIK
Counsel of Record

JOHN M. BOWMAN
JEFFER, MANGELS, BUTLER
& MARMARO LLP
2121 Avenue of the Stars
Tenth Floor
Los Angeles, California 90067
(310) 203-8080
Counsel for Petitioner

Dated: September 18, 1998